FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CA-239872	04-16-2019

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Tesla Motors

b. Tel. No. (714) 735-5696

c. Cell No.

f. Fax No.

g. e-Mail

h. Number of workers employed 200

d. Address *(Street, city, state, and ZIP code)*
6692 Auto Center Drive
CA Buena Park 90621-____

e. Employer Representative

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Auto & Truck Manufacturers

j. Identify principal product or service
electric vehicles

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

--See additional page--

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
(b) (6), (b) (7)(C)
Title:

4a. Address *(Street and number, city, state, and ZIP code)*
(b) (6), (b) (7)(C)

4b. Tel. No. (b) (6), (b) (7)(C)

4c. Cell No. (b) (6), (b) (7)(C)

4d. Fax No.

4e. e-Mail
(b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By (b) (6), (b) (7)(C)
(signature of representative or person making charge)

Title (b) (6), (b) (7)(C)
(Print/type name and title or office, if any)

Address (b) (6), (b) (7)(C)

04/16/2019 21:05:11
(date)

Tel. No.
(b) (6), (b) (7)(C)

Office, if any, Cell No.
(b) (6), (b) (7)(C)

Fax No.

e-Mail
(b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages and/or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C) 2019

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C) 019

8(a)(1)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages, hours, or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6), (b) (7)(C)	Retaliation	(b) (6), (b) (7)(C) 2018

8(a)(1)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6), (b) (7)(C)	Retaliation	(b) (6), (b) (7)(C) 2018

8(a)(1)

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by maintaining work rules that prevent or discourage employees from engaging in protected concerted activities.

Work Rule
Overtime not reported/paid
Driving off the clock
Forced to work through lunch without pay
Work in unsafe conditions.
Denied lunch. Forced to lie about it.

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May 31, 2019

Via E-file @nlrb.gov

Ms. Lisa McNeill
Field Attorney
National Labor Relations Board
Region 21
312 N. Spring Street, 10th Floor
Los Angeles, CA 90012

RE: Tesla Motors
Case 21-CA-239872

Dear Ms. McNeill:

As you know, we represent Tesla Motors ("Tesla" or the "Company") in the above-cited case (the "Charge") that was filed with the National Labor Relations Board ("NLRB") by former employee (b) (6), (b) (7)(C) " or the "Charging Party") against the Company on about April 16, 2019.

The Charge alleges the Company has violated Section 8(a)(1) of the National Labor Relations Act ("NLRA" or "Act") as amended by (1) disciplining and discharging (b) (6), (b) (7)(C) on the basis of alleged protected concerted activity including discussing and protesting terms and conditions of employment; and (2) "maintaining work rules that prevent or discourage employees from engaging in protected concerted activities."

Based on the facts and legal analysis submitted below, the Company denies it has violated the National Labor Relations Act in any manner. For the reasons discussed more fully below, the Charging Party's allegations are entirely without merit and the Charge should be dismissed in its entirety.[1]

[1] This position statement, while believed to be true and correct in all respects, is not an affidavit and is not intended to be used as such, or for any purpose except as expressly provided and limited by existing Board law. Further, this position statement is based on the undersigned's investigation

I. RELEVANT FACTUAL BACKGROUND.

A. The Company.

Among other things, the Company manufactures electric cars. Relevant to the Charge allegations, Tesla maintains an automotive sales and service facility located in Buena Park, California. (b) (6), (b) (7)(C) which covered Buena Park at the time relevant to the Charge allegations.

B. The Charging Party.

The Charging Party was employed as (b) (6), (b) (7)(C) at the Company's Buena Park facility from about (b) (6), (b) (7)(C) until [redacted] was terminated from [redacted] employment for violation of the Company's policy against harassment, effective (b) (6), (b) (7)(C) 2019.

As (b) (6), (b) (7)(C) job duties included (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Tesla vehicles. Prior to [redacted] termination, (b) (6), (b) (7)(C) received verbal counseling from (b) (6), (b) (7)(C) on several occasions relating to the Charging Party's:

- Continued failure and refusal to communicate with [redacted] manager and coworkers relating to [redacted] work assignments and job duties, including [redacted] failure to monitor and respond to calls, texts and emails from the team, such that (b) (6), (b) (7)(C) often did not know where [redacted] was or what [redacted] was doing;

- Repeated failure to attend required meetings;

- Failure to inform [redacted] manager that [redacted] was having issues making sure [redacted] had the right parts for the job prior to arriving at customer sites; and

- [redacted] negative attitude towards complying with the legitimate work-related directives of (b) (6), (b) (7)(C), as evidenced by (b) (6), (b) (7)(C) ongoing failure and refusal to correct the job performance deficiencies (b) (6), (b) (7)(C) repeatedly raised with [redacted]

(*See* attached Exhibit A.) However, as stated above (b) (6), (b) (7)(C) was not terminated for [redacted] poor job performance.

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of the facts as of the date submitted to the Region. The Company reserves the right to amend or supplement this statement of position in the event we become aware of new or different facts in the future.

C. Relevant Company Policies.

1. Policy Against Harassment.

Pursuant to Company policy, Tesla employees are prohibited from engaging in harassing behavior in the workplace. Prohibited harassment includes, but is not limited to, forms of visual conduct such as sexual gestures. Employees are unequivocally informed that "'I was joking' or 'I didn't mean it that way' are not defenses to allegations of harassment or violations of this Policy." (*See* attached Exhibit B, p. 2.) Individuals who violate the Company's anti-harassment policy are subject to corrective action up to and including termination of their employment. (*Id*., p. 5.)

2. Use of Company Vehicles.

Relevant to the Charge allegations, the Company maintains a policy pursuant to which employees who are required to drive a Tesla vehicle are paid for all time spent driving the vehicle, including drive time from their home to their first job site, and from their last job site back to their residence. (*See* attached Exhibit C, pp. 3-4.)

While [redacted] was employed, [redacted] was required to drive a Tesla vehicle, which [redacted] kept at [redacted] home when [redacted] was not using it to drive to job sites. [redacted] was paid for [redacted] reported driving time in the Tesla vehicle, consistent with Tesla's policies and practice. Neither [redacted] nor any other employee complained to management or Human Resources about "being required to drive the company vehicle while off-the-clock," as the Charging Party falsely claims.

3. Meal Breaks.

Consistent with applicable law, under the Company's "Work Schedule and Rest Breaks Policy" California employees are required to take an uninterrupted, duty-free meal period of at least thirty (30) minutes when they work more than five (5) hours in a workday. Employees must take a second meal period when they work more than ten (10) hours in a workday. (*See* attached Exhibit D, pp. 1-2.)

Employees who are not allowed to take a duty-free meal period under Company policy will be paid a penalty of one hour's pay. Employees who are not provided a meal period under Company policy are required to "immediately notify Human Resources to ensure compliance," and "supervisors who require employees to work through meal periods, may be subject to disciplinary action, up to and including termination of employment." (*Id*., p. 2.)

While [redacted] was employed with Tesla, [redacted] was occasionally unable to take a duty-free meal period. In each instance, [redacted] was paid for the missed meal period in accordance with Company policy and California law. Neither [redacted] nor any other employee complained to management or Human Resources about "being forced to work through their meal breaks without pay," as the Charging Party alleges.

4. Overtime Pay.

Company policy provides, "Non-exempt employees who work overtime will receive overtime pay in accordance with all federal, state and local laws." (*See* attached Exhibit E, p. 1.) During [redacted] employment with the Company, [redacted] worked overtime and received overtime pay. The Charging Party expressed to [redacted] a desire to work more overtime hours so that [redacted] could earn more overtime pay, and [redacted] attempted to accommodate [redacted] wish in this regard. However, neither [redacted] nor any other employee made any complaints to management or Human Resources regarding any alleged failure to receive overtime pay for overtime hours worked, as the Charge alleges.

5. Safety in the Workplace.

The Company maintains an Injury and Illness Prevention Program, pursuant to which employees are required to report "accidents, injuries and unsafe equipment, practices or conditions" in the workplace. (*See* attached Exhibit F.) Contrary to the Charging Party's assertions, during [redacted] employment neither [redacted] nor any other employee made any complaints to management or Human Resources regarding any "unsafe work conditions," as the Charging Party vaguely claims.

D. The Charging Party Was Terminated for Violating the Company's Policy Against Workplace Harassment.

On Monday, [redacted], 2019 [redacted] conducted a routine team meeting by telephone and video call. Most employees who participated did so by telephone. However, [redacted] and a [redacted] at the Buena Park facility participated by video, with [redacted] on [redacted] laptop in the same room as [redacted].

[redacted] also participated by video, although [redacted] was not at the facility. Rather—as [redacted] directly observed—[redacted] was sitting in [redacted] company vehicle throughout the call. [redacted] appeared to be paying continuous attention to the call, as [redacted] was looking at the camera and did not appear distracted in any way.

As [redacted] was wrapping up the call and employees were hanging up, [redacted] looked directly into the camera at [redacted], made a lewd hand gesture (simulating [redacted]) and rolled [redacted] eyes. Stunned, [redacted] exclaimed out loud, "Does [redacted] know [redacted] on video?" [redacted] then asked [redacted] if [redacted] had seen what [redacted] did, and [redacted] affirmed [redacted] had.

Apparently, [redacted] heard [redacted] question whether [redacted] knew [redacted] was on video, because the Charging Party promptly texted [redacted] the following:

> Yes I did , and I'm joking with customer ! Had a nightmare car and telling that I ate it on this one ! You can ask [redacted] if you want , I'm still here
>
> Wasn't to what you're saying! I know camera is on!

> [redacted] says you can call [redacted] and about me making that gesture, the last thing I need is for you to be upset with me thinking I'm stupid enough to do that when I am the one that jumped on zoom

(*See* attached Exhibit G.)

Having directly witnessed live video of [redacted] sitting attentively in [redacted] company vehicle throughout the meeting [redacted] had just conducted—without any indication whatsoever that [redacted] was doing anything other than participating in the team meeting, much less telling a customer a story using obscene hand gestures—[redacted] did not credit [redacted] claim that the gesture was not directed towards [redacted]. Nor did [redacted] take [redacted] up on [redacted] invitation to speak with the customer about the incident, as it would not have helped [redacted] case to "prove" that [redacted] was simulating [redacted] while speaking with the Company's customer. [redacted] subsequently informed [redacted] and Human Resources of the disturbing incident, and management determined [redacted] should be discharged for [redacted] obscene misconduct in violation of the Company's policy against harassment.

The following day, [redacted], [redacted] met with [redacted] to inform [redacted] of [redacted] termination. [redacted] responded by saying [redacted] was going to quit anyway.

No other employee at the Buena Park facility has been disciplined for behavior similar to that of [redacted], as management is not aware of any other employee who has engaged in such misconduct.

II. RESPONSE TO CHARGE ALLEGATIONS AND LEGAL ARGUMENT.

A. The Company Did Not Unlawfully Discharge [redacted].

The Charging Party cannot establish any basis for [redacted] claims that the Company has somehow engaged in conduct violative of Section 8(a)(1) of the Act. As set forth below, [redacted] cannot even make a prima facie case of discriminatory treatment under the Act.

It is well established that:

> Under the Wright Line test, the General Counsel must first prove, by a preponderance of the evidence, that the employee's protected conduct was a motivating factor in the employer's adverse employment action. The General Counsel satisfies this burden by showing that (1) the employee was engaged in protected activity, (2) the employer had knowledge of the protected activity, and (3) the employer bore animus toward the employee's protected activity.

Camaco Lorain Mfg. Plant, 356 NLRB 1182, 1184-1185 (2011) (unlawful discharge of employee who led union organizing efforts at employer's facility) citing *Wright Line*, 251 NLRB 1083 (1980); *see also Carpenter Technology Corp.*, 346 NLRB 766, 773 (2006) (employee disciplined for passing out union flyers). Evidence of union animus may support a prima facie case of

discriminatory conduct by an employer. *See, e.g., Alexandria NE LLC*, 342 NLRB 217 (2004) (dismissing allegations of discriminatory discipline where employee engaged in misconduct and there was no showing of union animus). That an employer's conduct is in retaliation for protected activity may also "be inferred from circumstantial evidence, including timing and disparate treatment." *Camaco Lorain Mfg.*, 356 NLRB at 1185. Where the Charging Party satisfies [redacted] burden to establish a prima facie case under the *Wright Line* test, the burden of persuasion then "shift[s] to the Employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Ibid.*

The Charging Party cannot meet [redacted] legal burden because [redacted] cannot show [redacted] was unlawfully discharged on the basis of any protected conduct. To the contrary, the undisputed evidence fully supports management's determination that [redacted] violated the Company's policy against harassment by making a sexual gesture towards [redacted] during a video conference call. The Charging Party admits [redacted] made the obscene gesture, and [redacted] claim that it was not directed at [redacted] is not credible.[2] [redacted] was discharged not on the basis of any protected activity, but solely as a result of [redacted] own willful misconduct.

No credence should be given [redacted] patently false claims that [redacted] complained about "work rules" such as "employees being required to drive the company vehicle while off-the-clock; employees being forced to work through their meal breaks without pay; unsafe work conditions; and failure to pay overtime." Tesla does not maintain any such "work rules." Employees are paid for time spent driving a Company vehicle; employees are paid for on-duty and missed meal breaks in full compliance with applicable law; employees are paid overtime pay; and [redacted] false claim that Tesla maintains an unlawful "work rule" the Charging Party characterizes only as unspecified "unsafe work conditions" is furthermore illogical and unintelligible. Regardless, neither the Charging Party nor any other employee has complained to management[3] or Human Resources about the alleged "work rules."

There is no evidence of union animus. Nor is there evidence that would support an inference of retaliation. There is certainly no evidence that [redacted] termination was in any way connected to purported complaints about workplace issues. Nor has the Charging Party alleged that the Company has discriminated against any of the unidentified "other employees" [redacted] claims made similar complaints while [redacted] was employed. Thus, there is no evidence to

[2] As stated above, the Charging Party's "explanation" for [redacted] actions—*i.e.*, that [redacted] made the obscene gesture while talking to a Tesla customer during the team meeting—was not only unsupported by [redacted] direct observation of the Charging Party throughout the meeting, but would also have constituted misconduct in violation of the Company's policies, if true.

[3] To the extent the Charging Party claims [redacted] directed any complaints to [redacted] during [redacted] employment, as explained below neither [redacted] is a supervisor or agent of the Company within the meaning of the Act.

support a finding that the Charging Party has been "singled out" in any way for engaging in any alleged protected activity.

Even if the Charging Party could demonstrate a connection between [redacted] termination and any protected activity—which [redacted] cannot do—the fact remains that management would have terminated [redacted] for [redacted] obscene act in the absence of the claimed (wholly unsubstantiated) protected conduct. The Charging Party cannot show that Tesla has permitted other employees to engage in such conduct and remain employed with the Company.

In short, there is not a scintilla of evidence to support a claim that [redacted] discharge violates federal labor law. [redacted] was properly terminated for [redacted] misconduct and the Region should dismiss the Charge.

B. The Company Has Not Maintained Unlawful Work Rules.

The Charging Party has not introduced any evidence whatsoever in support of [redacted] assertions that the Company has violated the Act by "maintaining work rules that prevent or discourage employees from engaging in protected concerted activities." [redacted] has only alleged that [redacted] complained about purported "work rules" that could potentially be found to violate applicable wage and hour laws, if such rules existed—which they do not. However, [redacted] has not even alleged the existence of any "work rule" that could arguably be found to "prevent or discourage employees from engaging in protected concerted activities." The Region should dismiss the Charging Party's meritless claims.

C. The Charging Party's Claims Are Barred by the Applicable Statute of Limitations.

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." To the extent the Charging Party claims the Company has engaged in any violation of the Act based on events occurring prior to [redacted], 2018, the Region should dismiss all such allegations with prejudice.

III. RESPONSE TO THE REGION'S REQUESTS FOR DOCUMENTS.

The Company responds to the Region's requests for documents as follows:

1. The Employer's complete response to the allegations.

Please see this position statement and supporting Exhibits attached hereto.

2. Documentary evidence in the Employer's possession, which rebuts [redacted] allegations.

Please see attached Exhibits A-I.

3. *A copy of the Employer's disciplinary procedure/process.*

Please see attached Exhibit B.

4. *If* (b) (6), (b) (7)(C) *was terminated for violating a policy/work rule, provide a copy of the relevant policy/work rule.*

Please see attached Exhibit B.

5. *A copy of* (b) (6), (b) (7)(C) *termination records and termination notice.*

Please see attached Exhibit H.

6. *Documents, including emails, that relate to and/or explain the basis for* (b) (6), (b) (7)(C) *termination.*

Please see attached Exhibits B and G.

7. *Please provide case law that the Employer relies upon in support of its position.*

Please see relevant case law cited herein.

8. *The Employer's position on the Section 2(11) supervisory and Section 2(13) agency status of* (b) (6), (b) (7)(C) *. Also, provide the correct name spellings and titles for each of the foregoing individuals.*

The Company responds as follows: (b) (6), (b) (7)(C) is a supervisor and/or agent of the Company within the meaning of Sections 2(11) and/or (13) of the Act.

(b) (6), (b) (7)(C) each hold the position (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) They do not have authority to hire, fire or discipline other employees, nor do they effectively recommend such actions.[4] It is the Company's position that neither (b) (6), (b) (7)(C) are supervisors or agents of the Company within the meaning of the Act.

[4] An example of the job description applicable to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) is attached hereto as Exhibit I.

IV. CONCLUSION.

As set forth above, the facts underlying the Charge do not support any violation of the Act. Accordingly, the Company submits the instant Charge is wholly without merit and should be dismissed, absent withdrawal.

Please contact the undersigned immediately if further information is required to assist the agency in its investigation of the merits of this Charge.

Respectfully Submitted,

/s/ Jean Kosela

Jean Kosela

Attachments: Exhibits A - I

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 21
US Court House, Spring Street
312 N Spring Street, 10th Floor
Los Angeles, CA 90012

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June 5, 2019

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Re: Tesla Motors
Case 21-CA-239872

Dear Ms. Rampel, Ms. Anastas and Ms. Kosela:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

William B. Cowen
Regional Director

cc: Tesla Motors
6692 Auto Center Drive
Buena Park, CA 90621

(b) (6), (b) (7)(C)
Email: (b) (6), (b) (7)(C)

WBC/(b) (6), (